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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/921,543	08/02/2001	Charles L. Vigue	NAIIP275/01.014.01	6834
28875	7590	08/17/2005	EXAMINER	
Zilka-Kotab, PC P.O. BOX 721120 SAN JOSE, CA 95172-1120			HENNING, MATTHEW T	
			ART UNIT	PAPER NUMBER
			2131	

DATE MAILED: 08/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/921,543

Applicant(s)

VIGUE ET AL.

Examiner

Matthew T. Henning

Art Unit

2131

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 03 August 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply has overcome the following rejection(s): 112 2nd paragraph rejections of claims 13-14.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: None.
Claim(s) objected to: None.
Claim(s) rejected: 1-11 and 13-25.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____.

CEL
Primary Examiner
AV2131
8/12/05

HC

Continuation of 11. does NOT place the application in condition for allowance because: Regarding applicant's assertion that provisional application 60/282,333 provide support for all the claims, the examiner notes that the applicant has failed to provide any evidence that this support exists.

In response to applicant's argument that Peng and Delaney provide nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, applicant has conveniently narrowed the scope of the art to which both Peng and Delaney apply. Both Peng and Delaney belong to the analogous art of data transfer to a device. Peng involves transferring data objects from one device to another (See Peng Col. 6 Step 4). Delaney involves transferring data objects to one device from a plurality of devices (See Delaney Col. 7 Line 10 - Col. 8 Line 20 and Fig. 2B). As such, both references belong to the analogous art of transferring data objects to a device. Simply because they do so in different manners does not classify them as non-analogous art. As such the examiner does not find the argument persuasive.

Regarding the applicant's argument that the version vector of Peng does not contain version identifiers, the examiner does not find the argument persuasive. The timestamps of Peng in the version vector clearly identifies which version of each object the requestor had. Simply because the version identifier is in the form of a timestamp does not make it any less of a version identifier. Furthermore, if it was not meant to be a version identifier, why would it be contained in the "version vector". As such, the examiner does not find the argument persuasive.

Regarding the applicant's argument that Peng did not disclose requesting a particular resource, the examiner notes that simply because the request contained multiple resources, does not indicate that Peng did not disclose requesting a particular resource. In fact, because the request contained multiple resources, the request must have contained a request for a particular resource. As such, the examiner does not find the argument persuasive.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). As such, in the combination of Peng and Delaney, as discussed above with respect to Peng, the request contained resource version identifiers.

In response to the applicant's argument that Peng did not disclose verifying that the version identifier was the same as the version identifier in the request, Peng clearly disclosed in col. 6 Section 6a "if the received object or update has a version vector or time stamp older than or equal to the version vector of the corresponding object in the first server", which was the version vector in the request (See Peng Col. 5 Step 1). What the verification was used for is not specified in the claims and therefore Peng meets the limitation. Therefore, the examiner does not find the argument persuasive.

With regards to applicant's assertion that Radatti teaches away from "comparing the listing...to determine which resources are to be requested", the examiner points out that paragraph 0064 of Radatti clearly disclosed comparing the lists, and paragraph 0098 clearly disclosed that if the list do not match, searching through the server list to determine which resources will be requested. As such, the comparison is clearly a step in the determination and therefore the examiner does not find the argument persuasive.

With regards to applicant's argument that Radatti did not disclose verifying that the version identifier was embedded in the resource, Paragraph 0093 of Radatti clearly states that the version information in the received resource is hashed and compared with a hash of the version information of the server copy of the resource. This is a well know method for comparing information. Radatti further indicates that if the hashes do not match, the resource is retrieved again. As such, it is clear that the version information is verified in Radatti. Therefore, the examiner does not find the argument persuasive.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Therefore the argument that Peng did not disclose determining which resources would be requested over the peer-to-peer network, the examiner does not find the argument persuasive.

With regards to the argument that Delaney teaches away from separate requests, simply because one preferred embodiment of Delaney which was not relied upon suggests a difference from the method relied upon, does not render the combination unobvious. As such, the examiner does not find the argument persuasive.

As such, the examiner has maintained the prior art rejections presented in the final office action dated 6/24/2005. .